

EMPLOYMENT LAW BRIEFING

AUTUMN 2010

Minimum Wage Increases: On January 1, 2011, the inflation-indexed minimum wage rates for Washington and Oregon will increase. Last year, the rates did not change - due to a decline in the cost of living. Washington's rate, which remains the highest in the nation, will go up by 12 cents to **\$8.67** per hour. The minimum hourly wage for Oregon will increase by 10 cents, to **\$8.50**. The federal minimum of \$7.25 per hour, set in July of 2009, is not scheduled to change.

The USERRA Escalator: Under the Uniformed Services Employment & Reemployment Rights Act ("USERRA"), an employee returning to work after performing "uniformed service," is entitled not only to the seniority and related benefits in place when the service began, but also what would have accumulated with continuous employment. Known as the "escalator" principle, the USERRA protections for returning employees apply to statutorily-mandated benefits as well as those voluntarily provided by an Employer. For example, time away from work, for uniformed service, should be included when determining an employee's eligibility for federal or state family leave. Please call our office if you have questions regarding the application of USERRA.

Check Your Handbook: What are your policies regarding employees' use of the internet? Rules limiting use during working time are a good place to start. Policy language with broad restrictions on the content of online communications, however, may be going too far. Prohibitions against negative comments in blogs, or on social networking sites, may violate employees' right, protected under the National Labor Relations Act, to engage in "concerted" activity. Such activities include communications among employees, or by one employee on behalf of others, regarding terms and conditions of employment. The protections of the act apply to both union and non-union employees. The National Labor Relations Board is currently pursuing a complaint against an Employer for allegedly discharging an employee because of critical remarks about her supervisor on posted on Facebook, in violation of a rule publishing disparaging statements online. Two co-workers posted supporting comments on the page.

Overnight Travel Time: When is time spent for overnight travel considered "working time?" According to Oregon Wage & Hour regulations, an hourly employee traveling overnight is substituting travel for other work duties, and must be paid, when travel time occurs during regular working hours – regardless of the day. An employee must also be paid if work is being performed. For example, time spent by an employee driving a co-worker or doing paperwork on an airplane is working time. Travel time *outside of regular work hours*, as a passenger, is not working time, and need not be paid or included in hours worked for overtime purposes.

Letters from Lawyers: If you receive a letter from a lawyer representing a current or former employee, call us, or other employment law attorney, as soon as possible. These letters are often the first step towards a wage claim, discrimination complaint or a lawsuit. Regardless of merit, the costs of such actions may escalate rapidly. Early intervention by counsel representing your interests will help to assess the risk of liability and to contain costs.

Please contact our office if you have questions about the material in this newsletter, or other employment law compliance concerns.

If you prefer to receive future copies of **Employment Law Briefing** by FAX or e-mail, or if you have additions to, or deletions from our contact list, please let us know. Thank you. © 2010 Whitford Law Offices LLC



Whitford Law Offices LLC

1819 D Street NE Salem, Oregon 97301 Phone 503-365-8700 FAX 503-365-8701
www.TheEmployerAdvocate.com